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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JAYSON CARY PRICE, Defendant and Appellant.	D056272 (Super. Ct. No. FV1701043)

APPEAL from a judgment of the Superior Court of San Bernardino County, Miriam I. Morton, Judge. Affirmed.

A jury convicted Jayson Price of one count of assault by means of force likely to produce great bodily injury (Pen. Code,[1] § 245, subd. (a)(1), count 1), and of battery causing serious injury (§ 243, subd. (d), count 3), and found true the allegation appended to count one that Price personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)). Price admitted the truth of a prior prison term allegation (§ 667.5, subd. (b)).

1 All further statutory references are to the Penal Code unless otherwise specified.

The court sentenced Price to seven years in prison. Price argues the trial court erred by (1) excluding evidence supporting his claim that the sheriff's department framed him in retribution for his prior successful lawsuit against it, and (2) by denying one of his *Pitchess*[2] motions.

I

FACTS

A. Prosecution Evidence

The Attack

On May 10, 2007, Lloyd Morgan, a 63-year-old resident of Victorville, California, was walking his dog at approximately 12:30 p.m. when a white Nissan stopped in front of him. A man Morgan did not recognize got out of the car and approached him; Morgan tried to get away from him. The man said something to the effect of, "I wanna talk to you," and Morgan felt a blow to the side of his head from a hard object. He fell on his back, saw the man standing over him, and lost consciousness. Morgan identified Price at trial as his attacker.

Morgan next became aware of a man trying to help him. The man, Brandon Ryan, put him into Ryan's car and drove him to Morgan's daughter's house. Morgan was later transported to the hospital. He suffered significant injuries from the attack.

Ryan testified he was driving west on La Mesa Street in Victorville when he saw Morgan walking east on La Mesa Street. A white Nissan Altima, driving east on La

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2 *Pitchess* v. *Superior Court* (1974) 11 Cal.3d 531.

Mesa Street, stopped in front of Morgan. The driver of the car, whom Ryan identified at trial as Price, got out of the car and made eye contact with Ryan before turning toward Morgan. As Ryan pulled even with the white Altima, he saw (from approximately 35 to 40 feet away) Price hit Morgan on the left side of the head and, when Morgan fell, bend over him. Ryan made a U-Turn, and drove toward Morgan and Price. Price again made eye contact with Ryan, then returned to his car and drove away.

Ryan testified he was "a hundred percent sure" Price was the attacker. Ryan explained he recognized Price as the attacker because, from August 2004 to January 2005, when Ryan was on his high school football team, he and his teammates frequented a Taco Bell restaurant on Bear Valley and Amethyst Streets. During that period, Ryan had seen Price at that Taco Bell on at least half a dozen occasions, attempting to panhandle for change.

Approximately 30 seconds after Ryan stopped to help Morgan, a woman (Erin Davis) arrived and stopped to help Ryan tend to Morgan. Ryan put Morgan into his car and drove him to Morgan's daughter's home.

The Identification

San Bernardino County Deputy Sheriff McLaughlin interviewed Morgan after he was released from the hospital. Morgan described the attacker as between 5'10" and 6' tall, and around 180 to 200 pounds and muscular.[3] McLaughlin also spoke to Davis to

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[3] Ryan also described the attacker as 6'1" tall, between 180 to 200 pounds, with dirty blond or light brown hair. This description was consistent with the information and photograph on Price's driver's license, which was admitted into evidence as Exhibit 42.

obtain a telephone number for Ryan, and Davis told McLaughlin she did not see the attack but only assisted Morgan afterward. McLaughlin contacted Ryan, who told him the attacker looked like someone Ryan remembered from several years earlier.

McLaughlin told Detective Huff (the lead investigator on the case) he had spoken with Ryan and Davis, and that Davis reported she had not seen anything. Huff contacted Ryan and arranged for him to meet with a sheriff's department sketch artist the following day. On May 11, Ryan went to the sheriff's department and gave a description of the attacker to the sketch artist, who created a sketch of the attacker in about four hours.[4] Huff made copies of the sketch and showed it to different people in the area.

Huff subsequently created two "six pack" photographic lineups containing a photograph of Price. Huff used different photographs of Price (each of which looked similar to the sketch) in the different six packs, and Price's photographs were also placed in different positions in the six packs. Huff created the six packs using one Department of Justice computer program to generate the first six pack and another Department of Justice computer program to generate the other six pack. Both computer programs are designed to find five other photographs of individuals of similar appearance to the suspect's photograph. The other five photographs in each six pack were of white males with hair and features similar to Price in his photograph, and Price's photograph was the only one common to both six packs.

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4 The sketch was also admitted into evidence.

On May 16, 2007, Huff gave Ryan the standard admonishment on how to view the photographs before showing Ryan the first six pack lineup. Huff did not hint to Ryan who Ryan should pick. Ryan immediately pointed to Price's photograph in the first lineup and said, "That's him." Although Huff believed it was unnecessary to show Ryan the second six pack because he had already positively identified Price, Huff decided that because Ryan was already there he would show him the second six pack. When he saw the second six pack, Ryan again immediately pointed to Price's photograph and said, "that's him." Ryan initialed Price's photograph in both six packs.[5]

The Arrest

Sheriff Deputies Cunningham and Braaten saw Price drive his white Nissan Altima into his driveway, approximately one mile from the crime scene. Cunningham identified himself, ordered Price to get to the ground, and attempted to grab Price's arm. However, when Price tried to escape, and subsequently struggled with the officers when they tried to subdue him, the officers used force to subdue Price and accomplish the arrest. Price suffered a black eye and cuts and scrapes.

Price was brought to the Victorville sheriff's station for booking. While Huff was filling out the booking paperwork, Price asked Huff, "So how much time am I looking at?" Huff responded, "That's going to be set forth by the D.A.'s office" and continued to fill out the forms. Price then asked if it would be "three to five years," and Huff

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[5] Morgan was shown the photographic lineups and was unable to identify his attacker from the photographs. However, he was shown those lineups only six days after the attack and he was still suffering the aftereffects of the assault, including impaired memory and double vision.

responded "[a]t least." Price then asked, "So was he pretty old? He didn't look it," and Huff responded, "Yeah, he was like almost 70 or something," and Price then said, "Yeah, I wasn't there." Price also asked Huff, "Is he going to die?" and Huff replied, "I don't know his current condition. I do know he was hospitalized and his ear was nearly ripped off," and Price responded by sighing and looking down. Later, when Huff was driving Price to a hospital to have a health check, Price asked if he were going to be placed in "PC" (protective custody), and when Huff asked, "Why[,] were you in PC in jail or prison?" Price replied, "No, for beating up an old guy."

B. Defense Evidence

Price denied attacking Morgan. He did not know where he was at the time of the attack. He denied resisting arrest, and denied talking to Huff about the attack.

He admitted that he had frequented the Taco Bell during the period August through December of 2004, and on occasion asked for spare change while there, and conceded there was no "bad blood" between him and Ryan. Price also admitted he owned a white Nissan Altima on May 10, 2007.

Ms. Davis, who was not interviewed by the sheriff's department, testified that she saw someone leaving the scene when she drove by and saw the injured Morgan. The departing person got into a car, which she thought was bluish silver or perhaps a lighter greenish color, but she did not get a good look at the attacker. She also admitted she was not certain the car was bluish-silver or green, but was certain only that it was a lighter

color. The defense called an expert who testified about the vagaries of eye witness identifications and the potential reasons for misidentifications.

II

ANALYSIS

A. The Limitation on Defense Evidence

Price sought to introduce evidence that the sheriff's department bore animosity toward him and was motivated to slant its investigation to ensure he was convicted. He argues the trial court's exclusion of evidence demonstrating this animosity was an abuse of discretion and denied him his right to present a defense under the Sixth Amendment.

The Proffered Evidence

The prosecution moved in limine to exclude certain evidence, including that (1) Huff was aware (prior to Price's arrest) Morgan was related to employees of the sheriff's department, and (2) Price had filed a claim against the sheriff's department (based on Price being shot in 2006 by a deputy sheriff) and received a $75,000 settlement of that claim. Price opposed the motion, asserting the evidence of the victim's relationship to the sheriff's department was relevant to show the department was "bias[ed]" and was motivated to work harder to obtain a conviction, including "hid[ing] the fact that they sought DNA evidence and they fabricated statements of witnesses . . . ." The court ruled Price could introduce evidence the sheriff's department hid or fabricated evidence, but not merely that the victim had relatives in the department.

On the issue of the prior shooting and settlement, Price argued the evidence was relevant to show the sheriff's department was motivated to conceal, fabricate or shade evidence to convict Price because of its antipathy toward him. The court ruled the evidence of the prior shooting and settlement would be excluded both on relevance grounds and under Evidence Code section 352. Price subsequently sought to revisit the issue, asserting in his written motion that the sheriff's department's resentment toward Price led it to jump to the conclusion Price was guilty, and caused the sheriff's department to concoct a suggestive lineup and to fabricate or exaggerate his alleged admissions. Price also asserted that his expert would explain "experimental bias" could infect the accuracy of a lineup identification because the officer presenting the lineup knows which person he or she wants the witness to select, and the officer somehow sends nonverbal signals to the witness that "infect[] the process." The court denied Price's request to admit the evidence.

Legal Standards

Only relevant evidence is admissible, and all relevant evidence is admissible unless excluded under the federal or California Constitution or by statute. (*People v. Basuta* (2001) 94 Cal.App.4th 370, 386.) Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Evidence may be determined to be irrelevant if it leads only to speculative inferences. (*People v. Morrison* (2004) 34 Cal.4th 698, 711.) "The test of relevance is whether the evidence tends

' "logically, naturally, and by reasonable inference" to establish material facts . . . .' [Citation.] The trial court has broad discretion in determining the relevance of evidence . . . ." (*People v. Carter* (2005) 36 Cal.4th 1114, 1166-1167.)

Even if evidence is deemed to have some potential relevance, the evidence "may nonetheless be excluded under Evidence Code section 352 at the trial court's discretion if 'its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.' We review rulings under this section for abuse of discretion." (*People v. Richardson* (2008) 43 Cal.4th 959, 1001.)

Evaluation

We conclude the trial court acted within its discretion in excluding the evidence. Although evidence tending to prove bias by witnesses is relevant (*People v. Kennedy* (2005) 36 Cal.4th 595, 615), a trial court could reasonably conclude that the fact the victim had relatives in the sheriff's department had no tendency in reason to prove or disprove any disputed fact of consequence to the determination of the action. Price's only articulated inference from this evidence is the speculation that an injury suffered by someone connected to the department caused the authorities to be biased against *Price* (rather than to be biased against the *actual* perpetrator), and to then build a second speculative inference on the first, that this bias led them to fabricate evidence against Price. However, this inferential chain is too speculative to provide relevance to the proffered evidence. Moreover, and of equal importance, the same fact would motivate

the sheriff's department to ensure that the *actual* perpetrator was found and convicted, and a conviction of an *innocent* man would not serve that purpose. Finally, Price was not precluded from introducing *relevant* evidence—the sheriff's department *in fact* fabricated evidence or shaded testimony against him—but was only barred from speculative inferences as to *motives* for such alleged misconduct. The exclusion of this evidence was not an abuse of discretion.

Price's second argument—that the sheriff's department's resentment toward Price from the shooting and resulting settlement caused it to engage in abusive police practices, including holding a suggestive lineup and fabricating or exaggerating his alleged admissions—suffers from the same defects: he seeks to speculate as to the subjective attitudes and motives of individual members of law enforcement arising from Price's behavior unrelated to the current offenses, and to then additionally extrapolate (from this speculative motive) that the evidence implicating him in the current offenses must therefore have been fabricated. However, the principal evidence implicating Price was that Ryan (1) gave a physical description of the attacker consistent with Price's description (without any evidence Ryan's description came from prompting from any deputy sheriff), (2) gave a description of the attacker's vehicle consistent with Price's vehicle (again without any suggestion Ryan was prompted by any deputy sheriff), (3) sat with a sheriff's department sketch artist to generate a composite sketch of the attacker that resembled Price (again without any suggestion Ryan was prompted by any deputy sheriff to depict Price), and (4) immediately pointed to Price's photograph in the first lineup and

said, "That's him" (as well as subsequently making an immediate and positive identification of Price when shown the second lineup) without any suggestion either that he was influenced by any verbal or nonverbal cues from Huff or that the photographic lineups were skewed to improperly suggest who Ryan should identify as the attacker.[6]

We conclude the trial court did not abuse its discretion in concluding the "motivation" evidence was irrelevant as lacking probative value on any disputed fact or, alternatively, that any minimal probative value was outweighed by the undue consumption of time (that would have resulted from mini-trials on the facts surrounding the earlier shooting and settlements) or by the substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. This conclusion also resolves Price's federal constitutional arguments, because neither the exclusion of evidence of marginal impeachment value under Evidence Code section 352 nor the routine application of state evidentiary law to exclude evidence offends the Sixth Amendment. (*People v. Brown* (2003) 31 Cal.4th 518, 545-546.)

B. The *Pitchess* Motion

Price requests this court review the trial court's denial of discovery pursuant to his second *Pitchess* motion.

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6 The only evidence was that the six packs were created using a Department of Justice computer program, without any suggestion the program was tampered with to permit it to target Price, or any claim that either of the six packs were intrinsically suggestive. (See, e.g., *People v. Johnson* (1992) 3 Cal.4th 1183, 1217.)

In the trial court, Price filed a *Pitchess* motion in which he sought discovery of the personnel records for Deputy Sheriff Braaten and Detective Cunningham, including records of relating to complaints of prior use of excessive force or of filing false reports. In support of his motion, Price claimed Braaten and Cunningham used unnecessary force on him at a time when he was handcuffed and not resisting arrest, and any inculpatory statements made by Price while in subsequent custody were therefore involuntary. County counsel opposed the release of the personnel records.

The trial court conducted a hearing on the motion, concluded Price had made a showing of good cause to conduct an in camera hearing to review the requested personnel files, and subsequently conducted an in camera review of the personnel records. (See *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019 ["[i]f the trial court finds good cause for the discovery, it reviews the pertinent documents in chambers and discloses only that information falling within the statutorily defined standards of relevance"].) After reviewing the personnel records in camera, the court ruled there were no discoverable records in the file.

On appeal, this court is required to examine the materials in camera and determine whether the trial court abused its discretion by refusing to disclose the contents of the pertinent personnel files. (*People v. Hughes* (2002) 27 Cal.4th 287, 330; *People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) We have examined the personnel records in camera and conclude the trial court did not abuse its discretion by denying discovery of the records responsive to Price's motion.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

HALLER, Acting P. J.

McINTYRE, J.